BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SHERRIE D. EASTER Claimant VS. **JOHNSON CONTROLS, INC.** Respondent AND **INDEMNITY INS. CO. OF NORTH AMERICA** Insurance Carrier	)	Docket No. 1,057,213

ORDER

STATEMENT OF THE CASE

Respondent and its insurance carrier (respondent) requested review of the October 11, 2011, preliminary hearing Order entered by Administrative Law Judge John D. Clark. Tom E. Hammond, of Wichita, Kansas, appeared for claimant. Vincent A. Burnett, of Wichita, Kansas, appeared for respondent.

The Administrative Law Judge (ALJ) found that claimant was injured out of and in the course of her employment with respondent on March 2, 2011, and ordered all medical paid. Further, the ALJ authorized Dr. Pat Do as claimant's authorized treating physician and ordered temporary total disability benefits if Dr. Do places restrictions on claimant that cannot be accommodated.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the September 29, 2011, Preliminary Hearing and the exhibits; and the depositions of Robert G. Brown, Ruby Stine Crowder-Burgin, Michael Wayne Cline, Ashley Kidwell and Robyn Blackmore, and the exhibits, all taken September 30, 2011, together with the pleadings contained in the administrative file.

ISSUES

Respondent requests review of the ALJ's finding that claimant met with personal injury that arose out of and in the course of her employment with respondent on March 2, 2011, arguing that claimant offered unreliable, fabricated and dishonest testimony. Respondent contends claimant's testimony was refuted by other witnesses as well as the contemporaneous medical records.

Claimant argues the evidence supports the ALJ's finding that claimant was injured arising out of and in the course of her employment by a series of accidents from February 21, 2011, through March 3, 2011, and asks that the ALJ's preliminary hearing Order be affirmed.

The issue for this Board Member's review is: Did claimant sustain personal injury by accident that arose out of and in the course of her employment with respondent either on March 2, 2011, or by a series of accidents from February 21, 2011, through March 3, 2011?

FINDINGS OF FACT

Claimant began working for respondent in 2008 on Line 10, an assembly production line. She testified that on February 21, 2011, after an argument or altercation with a coworker, she was moved to Line 9, the heat exchanger line. She said her job on Line 9 consisted of lifting a heat exchanger, which weighed about 40 pounds, off a conveyor, carrying it to a table, putting turbulators in the heat exchanger, and then carrying the heat exchanger over to another table. Claimant said she worked on Line 9 from February 21 through the last day she worked at respondent. She claims she injured her back while working on Line 9.

Claimant agreed she gave a statement to respondent that indicated the altercation on Line 10 occurred on February 24, not February 21. However, she stated she had previously been switched back and forth between Line 10 and Line 9 but suddenly was moved to Line 9 full time after the altercation. Claimant testified that she never had any problems performing the work on Line 10. She also said she had filled in at the "grocery store" at respondent in the past, and that job had not caused her any problems. She had been moved to the tube bending area one day, and she did not have any problems with her back or shoulder from that work activity. Claimant said the only job she had problems with was the heat exchanger job on Line 9.

Claimant testified that while she was on Line 9, she reported her back problems to Robert Brown, the heating focus factory manager, and to Michael Wayne Cline, her immediate supervisor on Line 9. She further testified that on March 3, 2011, she filled out an incident report indicating she had injured her back working on the heat exchanger. Several of respondent's employees, including Mr. Brown and Mr. Cline, testified, however,

that claimant did not work on March 3, 2011, and that her last day at work was on March 2, 2011. Claimant testified that she did work on March 3, that she clocked in, worked awhile in the morning, then went to OHS and was told to see her family physician. There are no OHS records in the file indicating a March 3, 2011, visit.[1] Ashley Kidwell, a safety department assistant with respondent, believed claimant filled out the incident report form on or about April 5, 2011, when claimant saw Dr. Wilkinson, because that was the first time claimant was in the Occupational Health Services (OHS) offices after she alleged a work-related injury.

Claimant testified she saw Dr. David Martinez, a chiropractor, on February 21, 2011. His records are difficult to read but appear to indicate she complained of cervical and lumbar spine pain from work with an onset of one to two days. She told Dr. Martinez that her pain increased with her job duties.[2]

The record contains a statement signed by claimant that indicates: "On this date: 2011 1 March" claimant was moved by Mr. Cline to heat exchangers knowing she had restrictions on lifting and on back movements.[3] The statement goes on to say claimant had a sharp pain in her shoulder area that traveled down to her spine and that she told Mr. Cline about those problems. The statement indicated that Mr. Cline then sent her to OHS, but she was not given an incident report on March 3 to report the injury.[4]

Robert Brown testified that in February 2011, respondent was short a supervisor, which required him to supervise Line 10. Claimant, therefore, was under his supervision in February 2011. Mr. Brown testified that to the best of his knowledge, claimant had not worked in the heat exchanger area before March 2, 2011. From February 21 through February 28, 2011, claimant would have been under his supervision. If claimant had been moved over to heat exchangers during that time, he would have known about it.

Mr. Brown testified that on February 24, 2011, he saw claimant in an argument with another employee. He called claimant into his office and as he was counseling her about the dispute, claimant told him she had wrist pain and that was why she had wandered off the line. After the meeting, Mr. Brown and the union steward took claimant to respondent's OHS to have her wrist evaluated. After claimant was seen at OHS, Mr. Brown spoke with

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[1] Claimant was at OHS on March 2, 2011, complaining of pain in her lower abdomen from lifting the heat exchangers.

[2] P.H. Trans., Resp. Ex. 3.

[3] P.H. Trans., Resp. Ex. 2.

[4] The statement goes on to mention a return to work slip filled out by her personal physician releasing her to return to work on March 7, and also mentions claimant's visit with the company doctor on March 4, 2011, so the above statement was not written on March 1, 2011.

Robyn Blackmore, an occupational health nurse, concerning whether the vibratory guns used on the assembly lines were causing claimant some issues. It was decided to move claimant to another area where she would not be using a vibratory tool.

Claimant took a vacation day on February 25, so her first day back at work after February 24 was on Monday, February 28. Mr. Cline testified that February 28, 2011, was the first day claimant came under his supervision. Claimant was supposed to have started bending tubes, but since the employee in the area known as the grocery store took a vacation day on February 28, Mr. Cline had claimant fill in at the grocery store that day.

On March 1, claimant was put to work bending tubes for use in the heat exchangers. Because of performance and quality issues, Mr. Brown and Mr. Cline decided not to use her in that capacity any longer. They decided to put claimant in the heat exchanger area starting March 2. Claimant reported to the heat exchanger area at 6 a.m. on Wednesday, March 2. To Mr. Cline's knowledge that was the first time claimant had worked on the heat exchanger's job. Claimant's first break would have been around 8 a.m.

Mr. Cline testified claimant approached him during the 8 a.m. break on March 2 and asked him if she could be moved to a different area. At the time, claimant was holding her abdomen, guarding her stomach. It was obvious to Mr. Cline that she had been crying. Claimant told him she could not lift the parts as required in order to perform the job to which she had been assigned. Mr. Cline said he asked claimant if she had restrictions he did not know about, and her response was that it was embarrassing and she did not want to discuss it. Eventually she told him she had female surgery a year earlier and the lifting of the units was causing her some discomfort in that area. She said she was experiencing abdominal pain similar to menstrual cramps, and she was also having vaginal discharge. Mr. Cline immediately took claimant to OHS and told Ms. Blackmore, the on-site health nurse, what claimant had told him. At no time during his discussion with claimant did she say anything about having back problems or a shoulder complaint. Mr. Cline said March 2 was the last day claimant worked at respondent. Mr. Cline said claimant was still assigned to him, so if she had returned, he would have known.

Ruby Stine Crowder-Burgin has worked for respondent for 39 years, approximately 20 of which she has been a group leader. In late February and early March 2011, she was working in the heat exchanger area. On March 2, 2011, claimant was placed in the heat exchanger area. Ms. Crowder-Burgin said claimant had not worked in that area before that date. As a group leader, Ms. Crowder-Burgin worked the line, but she also checked the work performed by the employees in her group.

Ms. Crowder-Burgin said on March 2, claimant was brought to the heat exchanger line and shown what tasks she was to perform. Ms. Crowder-Burgin said she was working in an area about 10 feet away from claimant, and she noticed that claimant was not lifting the heat exchangers. Instead, another employee, Manny, was doing the lifting and carrying of the heat exchangers. Claimant would then slowly drop turbulators into the

holes. Ms. Crowder-Burgin said she noticed that claimant would just wait for Manny to get the heat exchangers. Ms. Crowder-Burgin also noticed that claimant would pause and start talking to others and that she was not keeping up with the line. Ms. Crowder-Burgin eventually told Manny he could not continue to do his job and claimant's job too but that claimant had to help. She also had a conversation with claimant and told her to do her share of the work and that Manny could not continue to take the heat exchangers off the line for her. By then, it was time for the 8 a.m. break. Ms. Crowder-Burgin said she noticed claimant walking toward Mr. Cline during the break. Claimant did not report back to the heat exchanger line after the break, nor has she been back at any time.

Ms. Crowder-Burgin said because claimant was new to the department, she kept a special eye on her. She said she did not watch claimant the entire two hours, but every time she checked, claimant was not doing any lifting.

Robyn Blackmore is an occupational health nurse with respondent. She testified concerning claimant's visits to OHS in 2011. Ms. Blackmore said she was very familiar with claimant as she would come to OHS about once a month on average for personal complaints since she began her employment in 2008. Ms. Blackmore said on February 2, 2011, claimant reported to OHS that she was having pain in her right wrist. Claimant asked to be rotated every other day into another area. Claimant did not see a doctor for this wrist complaint.

On March 2, 2011, Mr. Cline brought claimant in to OHS because she was complaining of some gynecological issues. Claimant told Ms. Blackmore she was experiencing some increased vaginal discharge and cramping. Claimant told her she first felt the problem while working in the heat exchanger area and said it possibly began because she had a 30-pound lifting restriction and because of her previous gynecological issues. Ms. Blackmore looked through claimant's file and saw no restrictions. So she told claimant to see her primary care physician and bring back any possible restrictions she had. Claimant did not mention anything to Ms. Blackmore about back pain or right shoulder complaints during the visit on March 2, 2011. Claimant admitted in her testimony that she did not tell Ms. Blackmore about any back or shoulder problems on March 2, stating those symptoms did not appear until the next day, March 3.

On March 3, 2011, respondent received by fax a return-to-work slip for claimant signed by Dr. Cynthia Ward. That form indicated that claimant had no restrictions. Respondent also received a FMLA form filled out by Dr. Ward on claimant's behalf wherein claimant's diagnosis is set out as "abdominal/pelvic pain,"[5] which was consistent with the report claimant made to Ms. Blackmore on March 2, 2011.

[5] Kidwell Depo., Ex. 2 at 2.

On March 4, 2011, Ms. Blackmore received a call from Ashley Kidwell, a safety department assistant with respondent, concerning claimant. Ms. Kidwell told Ms. Blackmore that claimant's primary care physician had sent in a form indicating that claimant had no restrictions, but claimant continued to tell Ms. Kidwell she believed she had a 30-pound restriction. After some discussion between Ms. Blackmore and Ms. Kidwell, claimant was told she needed to go back to her chiropractor, who was treating her for her back, if she still believed she was going to have pain or she had an issue.

Claimant obtained a form signed by Dr. Martinez on March 4, 2011, that indicated she had temporary lifting, bending, and twisting restrictions until June 4, 2011. The form indicated claimant could return to work on March 7, 2011.

Claimant saw Dr. Daniel Lygrisse, a doctor who contracted with respondent, at OHS on March 4, 2011. The OHS record of that date indicates claimant asked for a release to return to work from a private back pain issue. Claimant's supervisor had told Dr. Lygrisse that claimant said she had abdominal/back pain from prior gynecological problems, and claimant presented a return to work slip from her treating doctor. Dr. Lygrisse noted claimant had subjective complaints only. He diagnosed claimant with back pain with uncertain etiology.

Ms. Blackmore's next encounter with claimant was on March 29, 2011. Claimant called and asked for the telephone number for workers compensation information. Ms. Blackmore questioned her about why she needed it, and claimant told her she needed the number because she had a back injury. Ms. Blackmore asked claimant if the back injury occurred at work and claimant said, "yes because I have a curve in my spine and degenerative changes in my back."[6] Ms. Blackmore asked claimant what directly caused the back pain, and claimant answered that it was lifting the heat exchangers. March 29, 2011, was the first time claimant told Ms. Blackmore that she had been injured on the job. Ms. Blackmore told claimant she needed to come into OHS and complete an incident report and see the company doctor.

Claimant saw the company doctor, Dr. Larry Wilkinson, on April 5, 2011. His records of that date indicate claimant gave him a history of 20 years of back pain and said she believed she had a 30-pound lifting restriction. Claimant told Dr. Wilkinson she had been hospitalized at age 13 secondary to a skiing injury. Claimant said she had seen a chiropractor in the past for a diagnosis of curvature of the spine and degenerative disc disease. Claimant told Dr. Wilkinson she did not remember if she told her supervisor about her back pain but thought Mr. Brown knew because other employees would have told him about it. Claimant expressed concern to Dr. Wilkinson of injuring her back if she returned to the heat exchanger line. Claimant also told Dr. Wilkinson she had been seeing her chiropractor two or three times a week since March 4, 2011, that she thought the pain

[6] Blackmore Depo. at 13, Ex. 1 at 7.

started on February 21, 2011, and that lifting the heat exchangers caused the back pain. Dr. Wilkinson's examination did not reveal any objective findings of an acute back injury. He opined that two hours of lifting heat exchangers did not exacerbate claimant's chronic back pain based on the fact that she did not report back pain to her supervisor or OHS.

The OHS records indicate that Dr. Wilkinson reviewed medical records from Dr. Ward and Dr. Martinez on April 19, 2011, and it was still his opinion that claimant's chronic back pain was not work related.

Ms. Blackmore next saw claimant on August 8, 2011, when claimant came into OHS and said she had received a letter saying she was going to be terminated. Instead, the letter indicated respondent needed an update on claimant's restrictions because her restrictions had run out sometime in June. Ms. Blackmore told claimant she needed to see her personal physician about the restrictions and then again see the company doctor, after which respondent might be able to get her back to work. Claimant left but returned the same day with a return to work slip from Dr. Martinez where he gave claimant permanent lifting and bending restrictions and indicated she could return to work on August 8, 2011. Along with that slip, Dr. Martinez sent a note indicating that claimant had "a repetitive strain of her spine related to her employment at [respondent] since Feb. 2001 [*sic*]."[7] Respondent was unable to accommodate the restrictions placed on claimant by Dr. Martinez.

Claimant saw Dr. Lygrisse at OHS on August 12, 2011, complaining of continued back pain. He reviewed the restrictions placed on her by Dr. Martinez. Dr. Lygrisse continued to find the etiology of claimant's symptoms unknown.

Ms. Blackmore said she has not seen any records that substantiate claimant's claim that she had a curved spine or 20 years of back problems. There were no back-related complaints in her file before. There was nothing in the preemployment physical or history claimant gave when she was hired that indicated a preexisting back condition. Ms. Blackmore acknowledged that claimant gets confused easily.

Ashley Kidwell is a safety department assistant with respondent. She handles workers compensation claims and communicates with insurance carriers. She shares an office with Robyn Blackmore. She knew claimant and stated claimant had come in multiple times for workers compensation injuries as well as personal return to work slips or personal illnesses.

On March 2, 2011, claimant had been sent to see her personal physician because she was having abdominal pain. A note had been faxed to OHS from claimant's doctor that indicated claimant had no restrictions. On March 4, 2011, claimant came in to get a

[7] Kidwell Depo., Ex. 6 at 2.

return to work slip. Ms. Kidwell stated that as she was speaking with claimant, claimant stated that she was fearful to be placed on the heat exchanger job because she had some personal problems with her back. Claimant was afraid if she was placed in that job, she might have pain. Claimant told Ms. Kidwell she thought she had a 30-pound weight restriction, but she did not have anything in writing and did not say where the 30-pound restriction had come from. Claimant also told Ms. Kidwell she had a 20-year history of back pain and that she saw a chiropractor regularly for adjustments.

Ms. Kidwell knew nothing about claimant's history of back problems, other than what claimant told her on March 4. She then called Ms. Blackmore and told her the information she had received from claimant. During Ms. Kidwell's conversation with Ms. Blackmore, it was decided that claimant would need to get a return-to-work form completed by her personal doctor and then be evaluated by the company doctor before she could return to work. Ms. Kidwell testified that during the conversation on March 4, claimant did not indicate she had injured her back at respondent in the preceding days.

Claimant was evaluated by Dr. George Fluter on September 1, 2011, at the request of claimant's attorney. Claimant gave Dr. Fluter a history that she had been assigned to an area where she worked with 40 plus pound heat exchanger units and where she did repetitive bending, twisting and lifting. She told him she began to experience pain in the involved parts of her body shortly after being assigned to the heat exchanger area and that at the end of February 2011, she reported the pain to her employer. Dr. Fluter reviewed claimant's medical records from OHS, Dr. Martinez, and Derby Family Medical Center.

Claimant told Dr. Fluter she had pain on the left side of her neck and upper back, her middle back, her lower back, and her groin bilaterally. She also reported migraine headaches. Page 3 of Dr. Fluter's report appears to be missing from the exhibit, and so there is no indication of the results of his examination. However, Dr. Fluter ultimately diagnosed claimant with upper and lower back pain, cervicothoracic strain/sprain, lumbosacral strain/sprain, myofascial pain affecting the upper and lower back, and probable sacroiliac joint dysfunction. Dr. Fluter opined:

> Based upon the available information and to a reasonable degree of medical probability, there is a causal/contributory relationship between Ms. Easter's current condition and repetitive work-related activities involving bending, twisting and lifting. The prevailing factor is the work-related activities.[8]

Dr. Fluter recommended claimant be restricted to lifting, carrying, pushing and pulling to 20 pounds occasionally and 10 pounds frequently; bending, crouching, and twisting should be restricted to an occasional basis; she should avoid holding her head and neck in awkward and extreme positions, and she should restrict overhead activities to an

[8] P.H. Trans., Cl. Ex. 1 at 4.

occasional basis. He also recommended treatment of he pain symptoms with medications, a TENS unit, and physical therapy, and recommended x-rays and possibly an MRI.

PRINCIPLES OF LAW

K.S.A. 2010 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends." K.S.A. 2010 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment.[9] Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.[10]

The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

> The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service.[11]

An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.[12] The test is not whether the accident causes the condition, but whether the accident aggravates or

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[9] K.S.A. 2010 Supp. 44-501(a).

[10] *Kindel v. Ferco Rental, Inc*., 258 Kan. 272, 278, 899 P.2d 1058 (1995).

[11] *Id.* at 278.

[12] *Odell v. Unified School District*, 206 Kan. 752, 758, 481 P.2d 974 (1971).

accelerates the condition.[13] An injury is not compensable, however, where the worsening or new injury would have occurred even absent the accidental injury or where the injury is shown to have been produced by an independent intervening cause.[14]

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[15] Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2010 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.[16]

ANALYSIS

The ALJ made no specific findings concerning the credibility of the witnesses, but he must have found claimant's testimony to be credible because he found her claim compensable. Claimant's testimony essentially stood alone on the question of whether she suffered a back injury at work as alleged. The Board generally gives some deference to an ALJ's determination of witnesses credibility where the ALJ had the opportunity to observe the witnesses testify in person. Here, the ALJ personally observed the testimony of only the claimant. The other five witnesses testified by deposition. The physicians' records and reports were introduced as exhibits without supporting testimony.

In her Application for Hearing dated August 12, 2011, claimant alleged she suffered injuries to her "[b]ack, neck, right shoulder & all parts affected"[17] in a series of accidents beginning February 21, 2011, and ending March 3, 2011. However, in her preliminary hearing testimony, claimant focused on her back injury, which she attributed to lifting 40-pound heat exchangers. Claimant was adamant that she worked on Line 9 and lifted heat exchangers before March 2, 2011, but the greater weight of the evidence is that claimant only worked with the heat exchangers on Line 9 for a couple of hours on one day, March 2. Even then, she personally lifted few, if any, heat exchangers. Rather, it was a coworker named Manny who was helping her by doing most of the lifting. Furthermore, claimant reported abdominal pain, not back pain, on that date. Claimant did not make any report of a work-related back injury on March 2. During her preliminary testimony, claimant explained this by saying that her back and shoulder symptoms started on March 3.

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[13] *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, Syl. ¶ 2, 949 P.2d 1149 (1997).

[14] *Nance v. Harvey County*, 263 Kan. 542, 547-50, 952 P.2d 411 (1997).

[15] K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, *rev. denied* 286 Kan. 1179 (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, *rev. denied* 271 Kan. 1035 (2001).

[16] K.S.A. 2010 Supp. 44-555c(k).

[17] Form K-WC E-1 Application for Hearing filed August 16, 2011.

According to respondent, claimant's last day performing work for respondent was March 2. Claimant testified that she also worked for a brief time on March 3. The record does contain a form bearing respondent's name entitled Preliminary Incident Investigation Report which is signed by claimant and dated March 3, 2011.[18]

Claimant testified she did not have any problems working on Line 10. Rather, it was Line 9 that caused her problems. Respondent contends claimant was moved from Line 10 to Line 9 because of her complaints of wrist pain, which claimant attributed to the vibratory guns used on Line 10. Claimant's chiropractic treatment records for February 21, 2011, show complaints of pain in her neck, shoulders and back, which are attributed to her work at respondent. At this time, claimant was working on Line 10.

The records of claimant's visit to Dr. Ward on March 2, 2011, only mention abdominal/pelvic symptoms. There was no diagnosis of back or shoulder problems. When claimant saw Ms. Kidwell on March 4, 2011, she mentioned having a 20-year history of back problems but made no mention of any recent back injury at work. Claimant said she was fearful of being placed on the Line 9 job and claimed she had restrictions that would prevent her from doing that job. She returned to her chiropractor and later to Dr. Wilkinson. Unlike the chiropractor, Dr. Wilkinson did not diagnose a work-related injury. Likewise, Dr. Lygrisse, who examined claimant on August 12, 2011, could not find a work-related component to her complaints. It is noteworthy that claimant reported to Dr. Lygrisse that her symptoms began in February 2011, not on March 2 or 3 and not 20 years ago.

The testimony of respondent's witnesses, together with the medical records of Drs. Ward, Wilkinson and Lygrisse constitute compelling evidence that claimant did not injure her back or shoulder lifting heat exchangers on March 2, 2011. Nevertheless, the contemporaneous chart entry by Dr. Martinez on February 21, 2011, noting that claimant injured her back at work and that her job duties at Johnson Controls increased her pain, together with the Preliminary Incident Investigation Report[19] dated March 3, 2011, that reports a back injury occurring on February 21, 2011, are persuasive evidence that claimant was injured at work on or about February 21, 2011, as alleged.

Based on the record presented to date, and in particular the contemporaneous medical records of Dr. Martinez, this Board Member finds the greater weight of the credible evidence proves claimant suffered work-related injuries to her back and shoulder on the dates alleged.

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[18] P.H. Trans., Cl. Ex. 2.

[19] That report form provides that the "report must be completed by the Supervisor or Department Manager (on duty) and submitted to a Safety Representative or Occupational Health directly after incident occurs." P.H. Trans., Cl. Ex. 2.

CONCLUSION

Claimant has met her burden of proving she sustained personal injury by accidents arising out of and in the course of her employment with respondent.

ORDER

WHEREFORE, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge John D. Clark dated October 11, 2011, is modified to find a series of accidents but is otherwise affirmed.

IT IS SO ORDERED.

Dated this _____ day of December, 2011.

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HONORABLE DUNCAN A. WHITTIER
BOARD MEMBER

c: Tom E. Hammond, Attorney for Claimant
Vincent A. Burnett, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge